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Panama tolls question, to be read during the proceedings of this Society, in which he took a deep, keen and enlightened interest.

FRANCIS LIEBER.

ADDRESS OF HONORABLE ELIHU ROOT, *President of the Society.*

GENTLEMEN OF THE SOCIETY:

This year, 1913, is the fiftieth anniversary of a very important event in the history of international law—the adoption and enforcement by the American Government of the code of rules governing the conduct of armies in the field, which is known to the American army as General Orders No. 100, of 1863. It happens that, without any intention to create a coincidence, the seventh annual meeting of the American Society of International Law is appointed and we are met here, exactly fifty years after the twenty-fourth day of April, 1863, when President Lincoln promulgated that famous order. It seems appropriate for this Society at this time to celebrate the event by paying honor to Francis Lieber, the author of the instructions embodied in the order.

In the early stages of the American Civil War both parties put into the field immense armies, commanded for the most part by volunteer officers drawn from the ordinary occupations of civil life and quite ignorant of the laws and usages of war. The sources of information were to be found only in scattered text-books and treatises, most of them in foreign languages, few of them readily accessible, and requiring the painstaking and diligent labor of the student to search out rules which were at the best subject to doubt and dispute. It was manifest that the officers of the Union and Confederate armies had neither time nor opportunity to enter upon an extended study of the international laws of war, and that unless some one indicated to these uninstructed and untrained combatants what was and what was not permissible in warfare, the conflict would be waged without those restraints upon the savage side of human nature, by which modern civilization has somewhat mitigated and confined the barbarous cruelties of war. Fortunately, General Halleck, who was put in chief command of the Union army in July, 1862, was an accomplished student of international law. He had already published an excellent book on that subject. While the duties of commanding general during an active conflict left him no time for research and codification himself, he knew what ought to be

done and how it ought to be done; and he called Francis Lieber, then a professor in Columbia College, and already a publicist distinguished upon both sides of the Atlantic, to the assistance of the government. The first service which Lieber rendered was the preparation in 1862 of a statement or essay upon *Guerilla Parties Considered With Reference to the Laws and Usages of War*. One cannot read this paper now, with its definite and lucid statements based upon grounds of reason and supported by historical reference, without feeling that it must have been a real satisfaction to the burdened and harassed Union authorities at Washington to have such a guide in dealing with the multitude of cases continually arising in that debatable land which intervenes between disciplined and responsible warfare on the one hand and simple robbery and murder on the other.

On the seventeenth of December, 1862, by order of Secretary Stanton, a board was created "to propose amendments or changes in the rules and articles of war and a code of regulations for the government of armies in the field as authorized by the laws and usages of war," and this board was made up of Francis Lieber, LL. D., and four volunteer officers, Generals Hitchcock, Cadwalader, Hartsuff and Martindale. That part of the board's work which consisted of preparing the code of regulations appears to have been committed to Doctor Lieber. The nature of the field upon which he entered and the spirit in which he did his work are indicated by Lieber's letter transmitting the result to General Halleck, on the 20th of February, 1863:

MY DEAR GENERAL:

Here is the project of the code I was charged with drawing up. I am going to send fifty copies to General Hitchcock for distribution, and I earnestly ask for suggestions and amendments. I am going to send for that purpose a copy to General Scott, and another to Hon. Horace Binney. * * * I have earnestly endeavored to treat of these grave topics conscientiously and comprehensively; and you, well-read in the literature of this branch of international law, know that nothing of the kind exists in any language. I had no guide, no ground-work, no text-book. I can assure you, as a friend, that no counselor of Justinian sat down to his task of the Digest with a deeper feeling of the gravity of his labor, than filled my breast in the laying down for the first time such a code, where nearly everything was floating. Usage, history, reason, and conscientiousness, a sincere love of truth, justice and civilization have been my guides; but of course the whole must be still very imperfect. * * *

Lieber's estimate of the work and of the occasion for it is shown in a letter from him to General Halleck of the 20th of May, 1863:

My dear General,—I have the copy of General Orders 100 which you sent me. The generals of the board have added some valuable parts; but there have also been a few things omitted, which I regret. As the order now stands, I think that No. 100 will do honor to our country. It will be adopted as a basis for similar works by the English, French, and Germans. It is a contribution by the United States to the stock of common civilization. I feel almost sad in closing this business. Let me hope it will not put a stop to our correspondence. I regret that your name is not visibly connected with this Code. *You* do not regret it, because you are void of ambition,—to a faulty degree, as it seems to me * * * I believe it is now time for you to issue a *strong* order, directing attention to those paragraphs in the Code which prohibit devastation, demolition of private property, etc. I know by letters from the West and the South written by men on our side, that the wanton destruction of property by our men is alarming. It does incalculable injury. It demoralizes our troops; it annihilates wealth irrecoverably, and makes a return to a state of peace more and more difficult. Your order, though impressive and even sharp, might be written with reference to the Code, and pointing out the disastrous consequences of reckless devastation, in such a manner as not to furnish our reckless enemy with new arguments for his savagery. * * *

The instructions comprise one hundred and fifty-seven articles. The scope of the work can be indicated briefly by stating the titles of the ten sections in which the articles are grouped.

Martial Law; Military Jurisdiction; Military Necessity; Retaliation.

Public and Private Property of the Enemy; Protection of Prisoners, and especially Women; of Religion, the Arts, and Sciences—Punishment of Crimes Against the Inhabitants of Hostile Countries.

Deserters; Prisoners of War; Hostages; Booty on the Battlefield.

Partisans; Armed Enemies not Belonging to Hostile Armies; Scouts; Armed Prowlers; War Rebels.

Safe Conduct; Spies; War Traitors; Captured Messengers; Abuse of the Flag of Truce.

Exchange of Prisoners; Flags of Truce; Flags of Protection. The Parole.

Armistice—Capitulation.
 Assassination.
 Insurrection; Civil War; Rebellion.

The provisions on these subjects give evidence of great learning and careful consideration. They covered the entire historical field of questions which had arisen and the possibilities of questions likely to arise, calling for instruction and direction. The definitions are clear, the injunctions and prohibitions distinct and unambiguous, and, while the instrument was a practical presentation of what the laws and usages of war were, and not a technical discussion of what the writer thought they ought to be, in all its parts may be discerned an instinctive selection of the best and most humane practice and an assertion of the control of morals to the limit permitted by the dreadful business in which the rules were to be applied.

These instructions directed the action of the Union officers and controlled the conduct of the Union forces during that great war which ended in the triumph of the armies on which their limitations were imposed. No one can say how far it was due to the instructions, but in honoring the memory of Francis Lieber we should not forget that after the surrender and the triumph came reconciliation, friendship, the restoration of a united country, and, beyond all human experience, even within the lifetime of the generation which had waged the conflict, freedom from the bitterness of spirit that time cannot soften.

Although the instructions were prepared for use in a civil war, a great part of them were of general application, and they were adopted by the German Government for the conduct of its armies in the field in the war of 1870 with France. It is interesting that this work of a simple private citizen should become the law controlling the mightiest forces of both the country of his adoption and the country of his birth. The sanction of two powerful governments for these rules and their successful employment in two of the greatest wars of modern times gave to them an authority never before acquired by any codification or statement of any considerable number of rules intended for international application. The prediction of Lieber that General Orders No. 100 would do honor to our country, that it would be adopted as a basis for similar works by the English, French, and Germans, and that it would be a contribution by the United States to the stock of common civilization, was justified. In the Brussels Conference of 1874, convened at the instance of the Emperor of Russia for the

purpose of codifying the laws and customs of war, the Russian delegate, Baron Jomini, as President of the Conference, declared that the project of an international convention then presented had its origin in the rules of President Lincoln. The convention agreed upon at Brussels was not ratified, but in 1880 the Institute of International Law made the work of the Brussels Conference and the work of Lieber, which so far as it was of general application was incorporated in that convention, the basis of a manual of the laws of war upon land; and finally, in The Hague Conferences of 1899 and 1907, the conventions with respect to the laws and customs of war on land gave the adherence of the whole civilized world in substance and effect to those international rules which President Lincoln made binding upon the American armies fifty years ago. Writing of Lieber's work, Sheldon Amos says in his book on *Political and Legal Remedies for War*:

The instructions were, in fact, the first attempt to make a comprehensive survey of all the exigencies to which a war of invasion is likely to give rise; and it is said on good authority that, with one exception (that of concealing in an occupied district arms or provisions for the enemy), no case presented itself during the Franco-German War of 1870 which had not been provided for in the American instructions.

Frederic de Martens, after describing the way in which Lieber's work came to be done, says:

So it is to the United States of North America and to President Lincoln that belongs the honor of having taken the initiative in defining with precision the customs and laws of war. This first official attempt to codify the customs of war and to collect in a code the rules binding upon military forces has notably contributed to impress the character of humanity upon the conduct of the northern states in the course of that war.

Bluntschli says, in his article on *Lieber's Service to Political Science and International Law*:

The Instructions for the Government of Armies of the United States in the Field were drawn up by Lieber at the instance of President Lincoln, and formed the first codification of International Articles of War. This was a deed of great moment in

the history of international law and civilization. Throughout this work also we see the stamp of Lieber's peculiar genius. His legal injunctions rest upon the foundation of moral precepts. The former are not always sharply distinguished from moral injunctions, but nevertheless, through a union with the same, are ennobled and exalted. Everywhere reigns in this body of law the spirit of humanity, which spirit recognizes as fellow-beings, with lawful rights, our very enemies, and which forbids our visiting upon them unnecessary injury, cruelty, or destruction. But at the same time, our legislator remains fully aware that, in time of war, it is absolutely necessary to provide for the safety of armies and for the successful conduct of a campaign; that, to those engaged in it, the harshest measures and most reckless exactions cannot be denied; and that tender-hearted sentimentality is here all the more out of place, because the greater the energy employed in carrying on the war, the sooner will it be brought to an end, and the normal condition of peace restored.

Then follows a very interesting statement by Bluntschli which points out a consequence of the instructions not the least in value to the student of international law and to the development of that science upon which the hoped-for peace of the world so largely depends. It appears that Bluntschli found in Lieber's work the inspiration of his celebrated codification of international law, for he says:

These instructions prepared by Lieber, prompted me to draw up, after his model, first, the laws of war, and then, in general, the law of nations, in the form of a code, or law book, which should express the present state of the legal consciousness of civilized peoples.

Professor Ernest Nys sums up the far-reaching effect of Lieber's codification by the statement:

The ideas of the American publicist have penetrated not only the scientific world through the works of Bluntschli, but by the work of the Conferences of Brussels in 1874, and The Hague in 1899 and 1907, they have penetrated international politics.

Major General George B. Davis, who is specially qualified to treat of the subject from the different points of view of the Judge Advocate General of the Army and of the international lawyer, has kindly furnished me with a memorandum upon the relations in detail be-

tween General Orders 100 and the Hague conventions, and I will ask the Secretary to print the memorandum in the Proceedings with this paper.¹

When we recall the frightful cruelties upon combatants, upon prisoners, upon citizens, the overturning of all human rights to life and liberty and property, the fiendish malignity of oppression by brutal force, which have characterized the history of war, we cannot fail to set a high estimate upon the service of the man who gave form and direction and effectiveness to the civilizing movement by which man at his best, through the concurrence of nations, imposes the restraint of rules of right conduct, upon man at his worst, in the extreme exercise of force.

Let me say something about the man himself. He was born in Berlin on the 18th of March, 1800. His childhood was passed in those distressful times when the declaration of the rights of man and the great upheaval of the French Revolution had inspired throughout the continent of Europe a conception of popular liberty and awakened a strong desire to attain it, while the people of Prussia were held in the strictest subjection to an autocratic government of inveterate and uncompromising traditions. In the meantime foreign conquest, with the object lessons of Jena and Friedland and the Confederation of the Rhine, threatened the destruction of national independence; and love of country urged Germans to the support of a government which the love of liberty urged them to condemn. It was one of the rare periods in which political ideas force themselves into the thought and feeling of every intelligent life, and, alongside with the struggle for subsistence, the average man finds himself driven by a sense of necessity into a struggle for liberty, opportunity, peace, order, security for life and property—things which in ordinary times he vaguely assumes to come by nature like the air he breathes. So the early ideas of the child were filled with deep impressions of the public life of the time. He remembered the entry of Napoleon into Berlin after Jena. He remembered the humiliation of the peace of Tilsit. He remembered Schill, the defender of Colberg, and Stein, and Scharnhorst. He was a disciple of Doctor Jahn, the manual trainer of German patriotism. At fifteen, after the escape from Elba, he enlisted in the Colberg regiment and fought

¹Printed herein, p. 22.

under Blücher at Waterloo. He was seriously wounded in the Battle of Namur and had the strange and vital discipline of lying long on the battlefield in expectation of death. He was a member of patriotic societies and was arrested in his nineteenth year, and imprisoned four months on suspicion of dangerous political designs. He was excluded from membership in the German universities, except Jena, where he received his degree of Doctor of Philosophy in 1820. At twenty-one he made his way to Greece with a company of other young Germans, inspired, by a generous enthusiasm for liberty, to an unavailing attempt to aid in the Greek War of Independence. Returning penniless from Greece he found his way to Rome, became a tutor in the family of Barthold George Niebuhr, then Prussian Ambassador, and there he won the confidence and life-long friendship of that great historian whose influence in familiar intercourse both increased the learning and calmed and sobered the judgment of the impetuous youth. Returning to Prussia, he was again arrested and imprisoned for nearly a year upon charges of disaffection to the government. Released through the intercession of Niebuhr, he went to England, and after a year's hard struggle there, he came, in 1827, to the United States and to Boston. Seeking employment he found it in taking charge of the Boston Gymnasium. Through Niebuhr's good offices he became the American correspondent of a group of German newspapers. He devised a plan for the publication of an encyclopedia, and for this he secured a distinguished list of contributors and associates. He became its editor, and in 1829 the publication of the *Encyclopedia Americana* was begun. It was a distinct success. Lieber's connection with it not only forced him to a broad and accurate knowledge of American life, but brought him in contact with a great range of leaders of American thought and opinion, and this association gave him an intimate knowledge of American social conditions and public affairs. Bancroft, and Hilliard, and Everett, and Story, and Nicholas Biddle, and Charles Sumner were among his friends. In June, 1835, he was made Professor of History and Political Economy in South Carolina College, and for twenty-two years he held that chair, until, in 1857, he was called to Columbia College to be Professor of Modern History, Political Science, International Law, Civil and Common Law. His connection with Columbia and his residence in New York continued until his death in October, 1872. In the meantime, to the service as

adviser to the government, which I have already described, he added the classification and arrangement of the Confederate archives in the office of the War Department, and long served as umpire under the Mexican Claims Commission of July 4, 1868.

Lieber himself has said that his life had been made up of many geological layers. The transition from his adventurous youth to the life of an American college professor did indeed carry him from igneous to sedimentary conditions. Under the new conditions, however, his surpassing energy and capacity for application found exercise in authorship. His work on *Political Ethics*, published in 1838, and that on *Civil Liberty and Self-Government*, published in 1853, gave him high rank among writers upon the philosophy of government. Judge Story said of the former :

It contains by far the fullest and most correct development of the true theory of what constitutes the state that I have ever seen. It abounds with profound views of government which are illustrated with various learning. To me many of the thoughts are new, and striking as they are new. I do not hesitate to say that it constitutes one of the best theoretical treatises on the true nature and objects of government which has been produced in modern times, containing much for instruction, much for admonition, and much for deep meditation, addressing itself to the wise and virtuous of all countries.

And in an introduction to the latter work, Theodore Dwight Woolsey said :

It would be a grateful task to speak at length here of the service Doctor Lieber rendered to political science in this country. * * * He was indeed the founder of this science in this country in so far as by his method, his fulness of historical illustration, his noble, ethical feeling, his sound practical judgment, which was of the English rather than of the German type, he secured readers among the first men of the land, influenced political thought more than any one of his contemporaries in the United States, and made, I think, a lasting impression on many students who were forming themselves for the work of life.

By a great variety of miscellaneous essays, addresses, and magazine articles on subjects of education, penology, history, biography, consti-

tutional and international law, he exercised a powerful influence upon the development of American thought. By voluminous correspondence with many foremost Americans who were engaged in public affairs he made his influence felt upon the solution of specific questions in the conduct of government. A correspondence of many years with Charles Sumner is especially rich in matter of this description.

The philosophical habit of the German, the practical habit of the Englishman, the freedom from traditional limitations upon thought of the American, the breadth of view of his cosmopolitan experience, the intensity of his enthusiasm at once for liberty and for order, and the strength of his genuine sympathy for all mankind combined to set him in advance of his time in his views upon international law and his proposals for its development. We find him writing to Sumner on the 27th of December, 1861, after the Trent Affair—more than fifty years ago:

This would be a fair occasion to propose a congress of all maritime nations, European and American, to settle some more canons of the law of nations than were settled at the Peace of Paris,—canons chiefly or exclusively relating to the rights and duties of belligerents and neutrals on the sea; for there lies the chief difficulty. The sea belongs to all; hence the difficulty of the sea police, because there all are equals. I mean no codification of international law; I mean that such a congress, avowedly convened for such a purpose, should take some more canons out of the cloudy realm of precedents than the Peace of Paris did almost incidentally. Suppose Russia, Austria, and other nations (naming them) could be induced to send, each power, two jurists (with naval advisers if they chose), does any one, who knows how swelling civilization courses in our history, doubt that their debates and resolutions would remain useless,—even though the whole should lead, this time, to no more than an experiment? All those ideas that are now great and large blessings of our race, having wrought themselves into constitutions or law systems, belonged once to Utopia.

On the 16th of April, 1866, he writes to Bluntschli in Heidelberg:

Your intention to write a brief code on the Rights of Nations, in the middle of the nineteenth century, is a noble and daring one. For a long time it was a favorite project of mine that four or five of the most distinguished jurists should hold a congress in order to decide on several important but still unsettled

questions of national equity, and perhaps draw up a code. First I proposed that it should be an official congress under the government, and corresponded with Senator Sumner on the subject. But after awhile it became clear to me that it would be much better if a private congress were established, whose work would stand as an authority by its excellence, truthfulness, justice, and superiority in every respect.

June 18, 1866, to his wife:

Have you read the noble declaration of Prussia, that she will not capture enemies' property at sea during war? Such things warm one like a glass of burgundy. * * *

December 15, 1866, to Andrew D. White:

I fancy sometimes—but only fancy—how fine a thing it would be for one of the Peabodies, or some such gold vessel, to give, say twenty-five thousand dollars gold, for the holding of a private—*i. e.*, not diplomatic, although international—congress of some eight or ten jurists, to concentrate international authority and combined weight on certain great points, on which we have now only individual authorities. I have spoken about this years ago to Mr. Field.

On the 11th of June, 1868, to Sumner:

What an advance it would be—though requiring nearly twenty-two centuries—from the time when Thucydides said that private property was not acknowledged at sea as on land, to the middle of the nineteenth century, when private property—even of the enemy—should be declared to be protected, even floating without defense, on the wide sea. * * * I say that civilization would hardly have made or be able to make a greater stride in our century, than by the United States and North Germany agreeing on the great principle and thus inducing others to follow.

On May 7, 1869, to Judge Thayer:

The strength, authority, and grandeur of the law of nations rests on, and consists in, the very fact that reason, justice, equity, speak through men “greater than he who takes a city”—single men, plain Grotius; and that nations, and even Congresses of

Vienna, cannot avoid hearing, acknowledging, and quoting them. But it has ever been, and is still, a favorite idea of mine that there should be a congress of from five to ten acknowledged jurists to settle a dozen or two of important yet unsettled points—a private and boldly self-appointed congress, whose whole authority should rest on the inherent truth and energy of their own *proclama*.

On the 10th of April, 1872, to General Dufour, Honorary President of the International Committee of Geneva:

One of far the most effectual and beneficent things that, at this very juncture, could be done for the promotion of the intercourse of nations in peace or war (and there is *intercourse* in war, since man cannot meet man without intercourse)—one of the most promising things in matters of internationalism, would be the meeting of the most prominent jurists of the law of nations, of our Cis-Caucasian race—one from each country in their individual and not in any public capacity—to settle among themselves certain great questions of the law of nations as yet unsettled, such as neutrality, or the aid of barbarians, or the duration of the claims of obligations, of citizenship. I mean *settle* as Grotius *settled*,—by the strength of the great argument of justice. A code of proclamation, as it were, of such a body, would soon acquire far greater authority than the book of the greatest single jurist. I hope such a meeting may be brought about in 1874.

On the 26th of May, 1872, to Von Holtzendorff:

In 1846, in one of my writings, I recalled the fact that under Adrian, professors were appointed to lecture in different places, and Polemon of Laodicea instructed in oratory at Rome, Laodicea, Smyrna and Alexandria. The traveling professor had a free passage on the emperor's ships, or on the vessels laden with grain. In our days of steamboats and railroads the traveling professor should be reinstated. Why could not the same person teach in New York and in Strasburg?

You will perceive that here was a proposal of the exchange professorship, which we are putting in practice forty years after. Here was another proposal which was realized by the formation of the Institute of International Law. Of this Professor Bluntschli says:

Lieber had great influence, I may add, in founding the *Institut de Droit International*, which was started in Ghent, in 1873, and

forms a permanent alliance of leading international jurists from all civilized nations, for the purpose of working harmoniously together, and thus serving as an organ for the legal consciousness of the civilized world. Lieber was the first to propose and to encourage the idea of professional jurists of all nations thus coming together for consultation, and seeking to establish a common understanding. From this impulse proceeded Rolin-Jaquemyn's circular letter, drawn up in Ghent, calling together a number of men eminent for their learning. This latter proposal to found a *permanent academy for International Law* met with general acceptance, but this was merely a further development of the original idea of Lieber, which was at the bottom of the whole scheme.

Here also was the proposal for a meeting of official representatives which was the precursor of the conferences at The Hague. It is interesting to observe that while Lieber considered the unofficial meeting to be an alternative for the official one, both have been realized, and in practice the work of the unofficial members of the Institute of International Law has made possible the success of the official conferences at The Hague, by preparing their work beforehand and agreeing upon conclusions which the official conferences could accept.

The important characteristic which marshaled all Lieber's forces for leadership of opinion and gave his work its chief and permanent value was an elevation of spirit, a pervading moral quality which was refined by adversity and trial throughout the formative period of his life; and this quality was well expressed by two maxims which he made his guides. He says, in writing to Judge Thayer:

From early times I observed that in the French Revolution people had always clamored for rights and never thought of duty; that more or less this is the case in all periods of agitation, and almost universally so in our own times and in our country
* * * *right* and *duty*: both together, and all is well; right alone, despotism,—duty alone, slavery.

And, writing to Sumner, he says:

Let me now give you what I consider my chief law maxim: *Nullum jus sine officio, nullum officium sine jure*,—forgotten by despot and *Rouge* (they want nothing but rights), forgotten by the slave who thinks he has nothing but duty or obligation.

And this he condensed into the maxim: "*Droit oblige.*"

The other maxim he kept displayed on the walls of his lecture room: "*Patria Cara: Carior Libertas: Veritas Carissima.*" And these maxims he exemplified in his life and in his service to mankind.

He was no dry student delving for knowledge he could not use; but a living soul instinct with human sympathy and love of liberty and justice seizing eagerly the weapons of learning to strike blows in the struggle for nobler and happier life among men. He was no vapid theorist who "argued about it and about, and evermore came out the same door wherein he went," but a sagacious, practical man among men, dealing with human nature as it was, with all its weakness and folly and error, all its nobility and power; and seeking to shape the human material upon which he wrought to its best uses according to its real capacity and strength.

It was a wonderful career. It was a great thing to be the author of the Instructions. It was a great thing to give the impetus which produced the *Institut de Droit International* and made possible the success of the Hague Conferences. It was a great thing to be the man he was and to live a long life, loving learning and law and liberty and country, and kind, and blessed by consciousness of distinguished service to them all. It stirs the imagination that the boy who lay wounded on the battlefield of Namur for his country's sake and who languished in prison for liberty's sake and who left his native land that he might be free, should build his life into the structure of American self-government and leave a name honored by scholars and patriots the world over.

If our Society, at once national and international, were about to choose a patron saint, and the roll were to be called, my voice for one would answer "Francis Lieber."

MEMORANDUM SHOWING THE RELATION BETWEEN GENERAL ORDERS
NO. 100 AND THE HAGUE CONVENTION WITH RESPECT TO THE LAWS
AND CUSTOMS OF WAR ON LAND.

Prepared by Major General George B. Davis, U .S. Army.

<i>Lieber's Instructions.</i>	<i>Hague Convention of 1899.</i>
1-13 Martial Law.	Not mentioned, but cf. Arts. 42-56 on military occupation.
14-16 Military necessity.	In several articles. Arts. 23 and 40.
17, 18 Resort to starvation.	Not mentioned.
19 Notice of bombardment.	Art. 26.
20 Definition of war.	Not mentioned.
21 Status of enemy subjects.	Not mentioned.
22-25 Same subject.	Arts. 46-52.
26 Oath of temporary allegiance.	In Art. 45 a contrary view is expressed.
27-28 Retaliation.	Not mentioned.
29-30 Character of wars.	Not mentioned.
31 Appropriation of public money and property by belligerent.	Arts. 48-53.
32 Abolition of slavery.	Not mentioned.
33 Citizens of occupied territory not to be compelled to serve belligerent.	Art. 44.
34-37 Property belonging to religious or charitable foundations, or used for such purposes.	Art. 56.
38 Treatment of private property.	Art. 52.
39-41 Administration of occupied territory.	Arts. 53-49.
42-43 Slavery.	Not mentioned.
44 Protection of non-combatants.	Arts. 42-47.
46 Booty, prize.	Art. 45.
47 Crime in occupied territory.	Art. 43.

48	Deserters, recapture of, in service of the enemy.	Not mentioned. Offense punished by local law in Europe.
49-53	Prisoners of war. 56-67 have same subject.	Arts. 4-20.
49	Definition of "prisoner of war."	Not defined.
50	Same subject.	Art. 13.
51-52	Levies en masse are treated as prisoners of war.	Art. 2.
53	Surgeons, chaplains, etc.	Not mentioned; covered by Geneva Convention of Aug. 22, 1864.
54-55	Hostages.	Not mentioned, practice of giving them being obsolete in European war.
56-67	Treatment of prisoners of war.	Art. 4.
57-58	Colored troops.	Unknown in European war.
59	Crimes committed by prisoners of war.	Art. 8.
60-63, 66	Quarter.	Art. 23 (d).
64	Captured uniforms may be used with a distinctive badge.	Not mentioned.
66	Prohibited acts.	Art. 22.
68	Firing on outposts.	Not mentioned.
70	Poisoned weapons.	Art. 23 (a).
71	Additional wounding of prisoners.	Art. 23 (c).
72	Property of prisoners of war.	Art. 4.
73	Arms of prisoners of war.	Art. 4.
74	Ransom.	Not mentioned. Obsolete in European war.
75	Character of confinement.	Art. 5.
76	Subsistence of prisoners.	Art. 7.
76	Labor of prisoners.	Art. 6.
77	Escape of prisoners of war.	Art. 8.
78	Same subject. Penalty.	Art. 8.
79	Medical attendance of prisoners.	Art. 7.

80	Extortion of information from prisoners of war.	Art. 9, in part.
81	Definition of term "partisan."	Not mentioned.
82-84	Guerillas and	Not mentioned.
85, 102, 103	War rebels.	Not mentioned.
86-87	Safe conducts.	Not mentioned.
83, 88, 104	Spies.	Arts. 29-31.
89, 98	Giving information to enemy.	Not mentioned.
90-92, 102, 103	War traitors.	Not mentioned.
93-97	Guides.	Art. 24, in part.
99, 100	Messengers. Carriers of despatches.	Not mentioned.
105-110	Exchange of prisoners.	Not mentioned.
107	True name of prisoners.	Art. 9.
111-114	Flags of truce.	Arts. 32-34.
115-118	Designating flags for hospitals and protected buildings.	Art. 27.
119-134	Paroles.	Arts. 10-12.
135-147	Truces and armistices.	Arts. 36-41.
144	Capitulations.	Art. 35.
148	Assassination.	Art. 23 (b).
149-157	Insurrection, Civil War, Rebellion.	Not mentioned, as The Hague rules of 1899 were primarily intended to regulate operations of war between sovereign states. No European state would bind itself, save in the most general way, in carrying on operations incident to the suppression of rebellion.

THE CHAIRMAN. It gives me pleasure to recognize Major General George B. Davis, who will make a few remarks upon the subject of Mr. Root's paper.

General DAVIS. Mr. Chairman, after the very just and lucid presentation of the life and services of Dr. Lieber, to which we have just listened, it seems to me that there is little room left for anything further in the way of speech, especially upon such a warm evening. But there are some little side lights that I can throw upon Dr. Lieber's career, which may prove of interest to some of you.

It is interesting to know that his first service and his last were essentially military in character. As a boy, brimming over with patriotic enthusiasm, he was struck down by a French bullet on the battlefield of Namur. In these days of merciful projectiles we find little to remind us of the woes and projectiles of the Napoleonic era. An ounce bullet was in use then, something like three-quarters of an inch in diameter, and anybody that was hit with such a projectile knew it. It was not a case of the bullet going clean through the body of the sufferer and of his making the discovery, somewhat later, that he had been pierced with a ball. In the Waterloo campaign the wounded man knew it at the very instant when he came in contact with an ounce of lead.

Dr. Lieber was twice wounded, once in the head and a second time in the body—he thought at the moment he had been shot through the lung, but, fortunately, that was not the case. Due to his youth and constitution, he recovered from these wounds very quickly after the surgeons were able to get at him, which was a very long time, indeed, as was usual in those days. A few weeks after his recovery, he was attacked by typhus fever—not typhoid, but typhus; and he survived that.

The abounding patriotism that led him to defend his country was, somewhat later, to be his undoing. The sentiments that were so applauded by the members of the ministry in arousing a spirit of resistance to the operations of the Emperor Napoleon, were not forgotten at Waterloo but continued with him to the end. He did not forget them when Napoleon had been eliminated as a factor in European politics, but he continued to cherish them as he had done before 1815 and, as a result got himself into trouble with the authorities and was obliged to migrate, first to England, and a little later, to the United States.

His career for something more than thirty years in the country of his adoption was that of a thinker and educator, and I feel that I am

correct in saying he was one of the ablest and most respected educators that worked and taught during that period.

I have often wondered why it was that this adopted citizen, conceding all his engaging qualities, and they were many, his manner of inspiring enthusiasm among his students, attaching them to him with hoops of steel—why it was that this German scholar became such an influential figure in the world of education. I cannot but believe that, at the time he came, education was at rather a low ebb; in other words, I should put it a little better, perhaps, if I were to say that the higher education had not sufficiently developed to be the force that it ought to have been in the United States at the time when Dr. Lieber's great work as a teacher began.

Dr. Lieber and another very eminent German, Dr. Karl Follen, who settled in Boston in the early part of the last century, were trained university men, trained teachers, men of broad educational views; and that was the very thing the need of which was so generally and clearly recognized in the United States.

An anecdote or two I think will put the situation before you and enable you to reach a conclusion—not that which I have reached, but something possibly in that direction.

General Leavenworth, of the army, was born about 1790, in a little town in northwestern Connecticut, and as he grew toward majority, he had a most earnest desire for some kind of accurate scholarship, for something exact in the way of knowledge. He did not know quite what it was that he needed, but he had the yearning. He found that the only thing that gave him the mental training that he needed in the way of exact study was Blackstone's *Commentaries*, then as now a most useful and learned work, admirable above all things in the logical way in which principles of the common law are presented. A little later George Ticknor, of Boston, one of our greatest American scholars, who had been taught Latin and Greek by a tutor from Trinity College, Dublin, an expert in the teaching of those languages, was sent by his father, for some strange reason, to one of the smaller New England colleges. Young Ticknor wrote to his father and said, "Why did you send me here, I would really like to know? I know more Latin than the professor of Latin, and I know more Greek than the professor of Greek." His father saw that he had made a mistake and sent young Ticknor to Germany, and he was the first American student to enter a German University and take the

regular courses of lectures with a view to a degree. In his autobiography he says that the university people did not quite know whether an American was red or white. He was not only the first or one of the first, but he was one of the best of our university trained students, as was shown by his later critical work, especially his *History of Spanish Literature*, a work of standard and permanent value.

I think the reason why Lieber, to a very great degree, and Dr. Karl Follen of Boston, to a less degree, perhaps, were so popular and so admired and loved and respected as teachers and professors was that they were men of broad, liberal views; they were men of thorough scholarship, of thorough training, and both of them had the genius for educational work.

In closing, I will say a word or two about General Orders No. 100, of 1863. After the second campaign of Bull Run in 1862, General McDowell, a very able soldier and a very patriotic citizen, who had commanded an army corps in that campaign, wrote to Mr. Lincoln that a colonel of a New York regiment in one of the recent battles in the vicinity of Bull Run was mortally wounded. There was no possible hope of his recovery. He had but a few minutes to live, and a friend, an officer of his regiment, came to take his last wishes and messages. The wounded colonel said: "I die a victim to Pope's incapacity and McDowell's treason." What had General McDowell been doing that was treasonable—because there was never a soldier more thoroughly loyal to his country than General McDowell.

One of the commonest rules of war requires a commanding general in occupied territory to protect the inhabitants and their property. Such protection is required of every government in time of peace; it is a thousand times more necessary in time of war. The particular offense that he was trying to uproot and put out of existence was that of plunder. Soldiers would go to houses that were occupied more frequently than not by women, and take away the little food that was left for their use. That was one of the offenses against the laws of war the General strove to prevent. Another was this: The laws of war forbid outposts to be fired upon. The practice has somewhat changed, but, as it was then, an outpost was one whose duty it was to observe, he could do nothing against the enemy. He was stationed in some commanding place where he could overlook the ground in front of him, and it was his duty to give notice of the approach of the

enemy. He was perfectly helpless. He could not fire upon the enemy if he saw him, and could only give warning of his approach; and so, as he was doing nobody any harm, it was a well-established principle that an outpost should not be assassinated, should not be fired upon; that pot-shots should not be taken at him.

These two practices, the most fundamental perhaps in the rules of war, General McDowell had been trying to enforce in his command; but here a man *in articulo mortis*, a man of the highest character, knowing that he had but a few moments to live, had said: "I die a victim to Pope's incapacity and McDowell's treason." A court of inquiry was called and General McDowell's military reputation was vindicated.

The incident which I have related showed what a field there was for cultivation, by somebody who was competent to make a clear and lucid presentation of the ordinary rules of war.

There is nothing in Dr. Lieber's General Orders No. 100 that is new, or abstruse; nothing which it is difficult to understand. In the practice of modern war it bears a resemblance to the Ten Commandments. Women and children shall not be interfered with; they are to be protected at all costs. Non-combatants are equally to be protected if they take no part in the war. Churches are not to be interfered with and shall not be used for any except their proper purposes. These are very simple statements. But the incident I have related shows how great a necessity there was that the officers and men in the armies of the United States should understand and practice the laws of war. That training they gained in full measure in General Orders No. 100.

Several officers were associated with Dr. Lieber on the board. The one who, I think, rendered him the greatest assistance was General Ethan Allen Hitchcock, of St. Louis, an old officer of the army, a man of great ability and power and of very wide observation, who had an experience of over forty years in the military service; and had what probably Dr. Lieber did not have—the terminology of military operations at his fingers' ends. Dr. Lieber could state the principle of international law, and General Hitchcock was able to give its proper application to the military service in technical terms that officers and men could understand. No one more deeply and profoundly admired Dr. Lieber than did General Hitchcock, who was his principal collaborator in this work.

At one time I was very curious to know what General Halleck's action was when the report containing the matter for the proposed General Order was submitted to him. He was himself an international law writer of very great authority. For a number of years no British vessel of war went to sea without a copy of Sir Sherstone Baker's English edition of Halleck's *International Law*, an excellent book which is still fairly up to date. I wondered what one of General Halleck's standing and experience would have to say about the code of rules that were submitted with a view to its introduction into a General Order. It is gratifying to know that it was most cordially received and approved by General Halleck. Not an "i" was dotted, not a "t" was crossed. There was a simple approval of it by the commanding general, who had watched its progress hopefully from day to day as the work moved on toward completion. There was cordial approval of the entire project, which matter was submitted to the Secretary of War and the President with a view to its adoption in the military service.

Dr. Lieber has a unique distinction. Sometime ago I read a very excellent French book on *Prisoners of War*. I was very much surprised to find that the first serious attention that was ever given to the treatment of prisoners of war was by Benjamin Franklin and John Adams in our treaty with Prussia of 1785. Going over the various requirements of the two Hague conventions as to the treatment of prisoners, it will be found that in many important matters they are not yet abreast the great clauses which Franklin caused to be inserted in the treaty with Prussia of 1785.

The French author of the work on *Prisoners of War*, a writer of great ability, pays a high tribute to the American negotiators of that treaty; he pays an equally high tribute to Dr. Lieber for his work in the preparation of General Orders No. 100, a considerable portion of which is devoted to the care and treatment of prisoners of war, an executive instruction which had been in force in the United States for nearly thirty years before the subject received any general or serious attention in Europe, and nearly forty years were to pass before the matter was to receive consideration at the hands of an international conference. Dr. Lieber's contribution to the laws of war was a memorable one; his contribution to the cause of humanity was infinitely greater, and his memory will be tenderly cherished by those whose efforts to mitigate the severity of the rules

of war and to reduce its inevitable hardships have been constant and untiring.

I thank you for your attention.

The CHAIRMAN. I have very great pleasure in introducing Mr. Talcott Williams, Director of the Columbia School of Journalism, in the City of New York, who will speak to us upon the question entitled, "The share of the United States in opening the world's seas and waterways."

THE PEACE OF THE WATERWAYS.

THE SHARE OF THE UNITED STATES IN OPENING THE WORLD'S SEAS
AND WATERWAYS.

ADDRESS OF DR. TALCOTT WILLIAMS, *Director of the Columbia School of Journalism*, New York City.

The United States was the first of the Powers, great or small, which rested its diplomatic policy in despatches, and its action by arms, upon the broad principle that the justice of humanity required that all the common utilities of the earth should be open to all men and all flags on terms of even-handed equality. In Jefferson's sonorous phrase in 1792, "The ocean is free to all men and the rivers to all their inhabitants."

The first of these is now so universally true and the second so generally practised, that none now realize in how different a world the Republic first stood forth to challenge immemorial 140 years ago. Neither ocean nor rivers were free in 1783 when the United States began its consistent and unvarying determination to free both from their various servitudes. Broad stretches of the ocean and numerous seas were restricted. The three-mile limit was far from universally accepted. Jurisdiction was claimed at distances of twelve, fifteen, eighteen and twenty miles. Revenue cutters made seizures at longer distances and still are empowered to do so by the municipal law of more than one land. The rights of capture after a blockade had been declared were carried to an inordinate distance. Contraband of war was an indefinite term capable of almost any application. Search and seizure were powers claimed by all navies and ruthlessly exercised by British vessels. In 1736 (9 Geo. II, c. 35), English law extended